

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
INVESTMENT COMMITTEE****Modernising Investment Treaties – Frequently asked Questions****Note by the Secretariat**

The investment policy community at the OECD launched a process on *Modernising Investment Treaties* in March 2021. In this process, governments from now 143 jurisdictions consider the merits of, and for interested jurisdictions, how they could transition substantive provisions featured in older-generation treaties to designs that are now consistently used in current treaty practice.

This note by the OECD Secretariat summarises the context, underlying rationale, and logistical information for this work to ensure transparency of government conversations under the work programme. It has been updated to reflect information as of June 2026. This note does not prejudge the outcomes of discussions under the work programme.

The work on *Modernising Investment Treaties* is documented at <https://oe.cd/foit2>.

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1. What is the purpose of the work programme on *Modernising investment treaties*?

Investment treaties have been a key component of many countries' international investment policies for the past half century. Over the past two decades, however, doubt has emerged about the design of certain provisions contained in these treaties, as they have been applied and interpreted in unintended ways that threaten to obstruct legitimate regulatory policy. The necessity for governments to respond to new challenges, in particular the climate crisis, pandemics and other emergencies, has shed new light on the interpretation of treaty provisions.

Governments participating in the process on *Modernising investment treaties* explore whether it would be better if substantive provisions featured in older-generation treaties were more similar to recent designs and how interested governments could achieve a transition in a pragmatic way.

2. Why is this work taking place at the OECD and how does it relate to efforts at UNCITRAL and in other fora?

Building on the international investment policy community that the OECD has served for decades, the process on *Modernising of investment treaties* now brings together treaty policymakers from 143 jurisdictions. Carrying out this work at the OECD ensures that:

- Policy communities of experts in their respective policy fields can discuss and exchange views, supported by evidence, analysis, and expertise of the Secretariat;
- Governments determine priorities and orientation of the work; and
- Governments enhance their relationships with peers around the globe.

This work does not compete with, duplicate, or substitute efforts undertaken in other organisations on similar matters. On the contrary, their respective material scope of action is complementary. In particular, the UNCITRAL Working Group III has been tasked to work on possible reforms of investor-state dispute settlement (ISDS), while work on the *Modernisation of investment treaties* at the OECD considers the opportunities for substantive treaty provisions reform. Work undertaken at UNCTAD provides technical assistance to jurisdictions on reform implementation.

All three organisations have been cooperating for years and, in March 2025, convened a [joint Conference](#) to explore the various synergies between these initiatives and to advance governments' reflections on merits, opportunities and practical avenues for the reform of investment treaties. In particular, UNCITRAL and OECD are actively engaging in their respective reform processes and discussions; including through participation in meetings and the organisation of side events.

3. Who is participating in this process?

Work on *Modernising investment treaties* is conceived as an inclusive process to which government representatives from now 143 jurisdictions from all continents are invited. They currently include Albania, Algeria, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Barbados, Belgium, Belize, Benin, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Burundi, Cabo Verde, Cambodia, Cameroon, Canada, Chad, Chile, China (People's Republic of), Colombia, Comoros, Congo, Costa Rica, Côte d'Ivoire, Croatia, Czechia, Democratic

Republic of the Congo, Denmark, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Estonia, Ethiopia, European Union, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Guatemala, Guinea, Guyana, Honduras, Hungary, Iceland, India, Indonesia, Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Korea, Kosovo*, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Lebanon, Liberia, Libya, Lithuania, Luxembourg, Madagascar, Malaysia, Mali, Malta, Mauritania, Mauritius, Mexico, Moldova, Mongolia, Montenegro, Morocco, Mozambique, Namibia, Nepal, Netherlands, New Zealand, Nigeria, North Macedonia, Norway, Oman, Pakistan, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Romania, Rwanda, San Marino, Saudi Arabia, Senegal, Serbia, Sierra Leone, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Tajikistan, Tanzania, Thailand, Trinidad and Tobago, Tunisia, Türkiye, Turkmenistan, Uganda, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Uzbekistan, Viet Nam, Yemen, Zambia, Zimbabwe.

The work is in principle open for participation of government officials from other interested jurisdictions.

4. What does the work programme on *Modernising investment treaties* involve?

Since the start of the work on *Modernising investment treaties* in 2021, discussions have documented that most governments have changed the design of several substantive clauses commonly found in investment treaties, a move carried by a shared intention to frame the contours of substantive treaty obligations more clearly. Most jurisdictions have consistently applied their new approaches to substantive provisions consistently.

Participating jurisdictions have analysed and discussed the evolution of treaty practice with regards to provisions that were identified as priorities by participants, such as 'fair and equitable' treatment, 'indirect expropriation' provisions, 'most-favoured-nation' treatment, 'national treatment' provisions, and 'full protection and security' clauses. Some governments have confirmed the intention underlying their new treaty practice and observed that their understanding of the contours of the obligations under these clauses is substantially similar.

Participants have also discussed potential means to transition older treaties with unspecific framings of substantive obligations to the approaches that they now consistently use. They have in particular considered the potential for joint interpretative agreements to clarify the intention of treaties that do not contain explicit textual specifications when relevant convergence permits; and the merits of plurilateral treaty modifications as a means to transition provisions contained in older treaties to designs that are now consistently used, when insufficient convergence exists to make joint interpretative agreements feasible. Since early 2026, interested jurisdictions are further exploring the feasibility, potential design features and operationalisation of a joint interpretative agreement.

In parallel, governments have so far developed an initial scope of agreement of three provisions – FET, FPS and the interaction of MFN with dispute settlement arrangements – to inform the framing of a potential joint interpretative agreement that interested and

* This designation is without prejudice to positions on status, and is in line with United Nations Security Council Resolution 1244/99 and the Advisory Opinion of the International Court of Justice on Kosovo's declaration of independence.

applicable jurisdictions could conclude. Discussions on establishing a collective understanding on the interpretation of ‘indirect expropriation’ and the ‘importation’ of substantive provisions from third-party treaties through MFN clauses are ongoing. Participants have also explored more general issues such as the interaction between investment treaties and States’ right to regulate.

The information gained on new designs of individual clauses through this effort has been valuable and can inform bilateral negotiations among participants and beyond. The engagement and pace of progress so far suggest some potential of the process for meaningful and pragmatic treaty reform through the development of concrete solutions to specifically identified issues that would benefit from a collective approach.

5. How are meetings conducted?

The OECD has convened intergovernmental government exchanges since its creation in 1961. It is conceived as a forum where governments’ experts in their respective fields exchange among peers. Meetings under *Modernising investment treaties* are held in principle in private among governments unless non-governmental participation is explicitly sought.

This format encourages and results in frank exchanges on a technical level in a cordial and collegial atmosphere. Governments contribute their expertise freely and informally.

A Chair guides the discussions in an impartial manner. Ms Sylvie Tabet has been designated for this role. Ms Tabet is an investment lawyer in the Canadian Government. In her role as the Chair of this process, she does not represent the Canadian government or Canadian interests.

Meetings are held in a hybrid or virtual manner to allow broad participation from governments around the world. Since early 2024, the frequency of meetings has increased to around four meetings a year.

The meeting languages are English and French. Simultaneous translation is being provided, and documentation is also be made available in both languages.

6. How long is the work programme on *Modernising investment treaties* scheduled to run?

Governments decide on the topics and priorities of the work carried out under the process on *Modernising of investment treaties*. These decisions are made at two-year intervals. The first meeting was held in October 2021 under the initial work programme running until end-2023. Subsequent work programmes were agreed on for the 2024-2025 and the 2026-2027 biennia. Activities are now being carried out in accordance with the priorities defined for 2026-2027.

7. Is it possible for other colleagues from my government to participate?

Individual governments can participate with several delegates. Please contact the Secretariat (investment@oecd.org) with contact details so that our distribution list can be updated and information shared in a timely manner.

8. What are the costs of participating?

Participation in the work programme on *Modernising investment treaties* is free of charge for governments and their representatives. The work of the OECD is funded by contributions by the Organisation's 38 Members. Voluntary contributions complement this source of funding. France has supported the work from 2022 until 2025. The Netherlands and Switzerland provide financial support for the 2026-2027 biennium.

9. How do I receive documentation and logistical information?

The OECD Secretariat circulates documents prior to meetings to delegations via e-mail. These documents are subsequently published on <https://oe.cd/foit2>.

The Secretariat (investment@oecd.org) stands ready to provide answers and assistance.